

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Mac Muir	Team: Squad #12	CCRB Case #: 201801421	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 01/29/2018 7:40 PM	Location of Incident: § 87(2)(b)	Precinct: 48	18 Mo. SOL 7/29/2019	EO SOL 7/29/2019	
Date/Time CV Reported Mon, 02/19/2018 6:01 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 02/19/2018 6:01 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Andrew Cummings	2646	956559	048 PCT
2. POM Nicolas Mahuad	02214	960850	048 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Andrew Cummings	Discourtesy: Police Officer Andrew Cummings spoke discourteously to § 87(2)(b)	§ 87(2)(b)
B.POM Andrew Cummings	Force: Police Officer Andrew Cummings fired his gun at § 87(2)(b)	§ 87(2)(b)
C.POM Nicolas Mahuad	Force: Police Officer Nicolas Mahuad fired his gun at § 87(2)(b)	§ 87(2)(b)

Case Summary

On February 19, 2018, this complaint was submitted by § 87(2)(b) on behalf of § 87(2)(b) with the Civilian Complaint Review Board (CCRB) via the Call Processing System. § 87(2)(b)

At approximately 7:30 p.m. on January 29, 2018, § 87(2)(b) was in a verbal dispute with his landlord, § 87(2)(b) in the shared kitchen-area of the apartment building where § 87(2)(b) lived at § 87(2)(b) in the Bronx. § 87(2)(b) attempted to stab § 87(2)(b) with a boxcutter. § 87(2)(b) and § 87(2)(b) § 87(2)(b)'s friend, struggled with and then restrained § 87(2)(b) § 87(2)(b) broke free, went upstairs, obtained a larger knife from his room, and chased § 87(2)(b) into the street through the intersection of East 181st Street and Prospect Avenue to § 87(2)(b) § 87(2)(b). Police Officers Andrew Cummings and Nicolas Mahuad of the 48th Precinct responded in a police vehicle and approached § 87(2)(b). They exited their vehicle and Police Officer Cummings instructed § 87(2)(b) to “drop the fucking knife” (**Allegations A: Discourtesy - Word:** § 87(2)(g)). Police Officers Cummings and Mahuad repeatedly told him to drop the knife and § 87(2)(b) ignored them. He repeatedly stated, “Shoot me.” § 87(2)(b) walked between two parked vehicles and toward Police Officer Cummings and Police Officer Mahuad with his knife raised. In response, Police Officer Cummings fired his gun at § 87(2)(b) four times and Police Officer Mahuad fired his gun at § 87(2)(b) two times (**Allegations B and C: Force – Gun Fired:** § 87(2)(g)) striking him four times in his chest and expired as a result of the gunshot wounds.

A portion of the body worn camera footage for this incident was obtained (Board Review 02) and captures the FADO allegations.

§ 87(2)(b)

Findings and Recommendations

Allegation A - Discourtesy: Police Officer Andrew Cummings spoke discourteously to

§ 87(2)(b)

§ 87(2)(b) provided a telephone statement on February 26, 2018 (Board Review 04).

§ 87(2)(b) provided a telephone statement on February 28, 2018 (Board Review 05). § 87(2)(b)

§ 87(2)(b) provided a telephone statement on March 6, 2018 (Board Review 06). § 87(2)(b) provided a telephone statement on May 8, 2018 (Board Review 07), and a sworn statement on May 16, 2018.

Police Officer Andrew Cummings was interviewed at the CCRB on December 13, 2018 (Board Review 22).

The body-worn camera footage that captured this incident was not directly provided by the NYPD. It was obtained via the NYPD Press Information website (Board Review 09). According to the Internal Affairs Bureau, the Force Investigations Division maintained sole custody of the full body-worn camera footage recorded by Police Officer Cummings and Police Officer

Mahuad, respectively, and refused to release the footage to the CCRB (Board Review 10). Prior to the NYPD refusal to provide the body-worn camera footage to the CCRB, the NYPD Legal Bureau repeatedly denied that the footage existed (Board Review 21).

In addition, the Force Investigations Division prevented the CCRB from obtaining the Firearms Discharge Report, the Unusual Occurrence Report, the Internal Affairs case file, and other related documents.

The general contours of this incident are undisputed. At approximately 7:30 p.m. on January 29, 2018, while in the shared-kitchen area of § 87(2)(b) in the Bronx, § 87(2)(b) informed § 87(2)(b) his tenant, that he needed to move out of the apartment. In response, § 87(2)(b) attempted to stab § 87(2)(b) with a boxcutter. § 87(2)(b) and his friend, § 87(2)(b) wrestled § 87(2)(b) to the ground. § 87(2)(b) yelled for § 87(2)(b) § 87(2)(b)'s roommate whose room was adjacent to the kitchen area, to call 9-1-1. As reflected in the EVENT (Board Review 23), at 7:40 p.m. § 87(2)(b) called 9-1-1 and told the operator that her roommate had stabbed her landlord. § 87(2)(b) went outside toward the street. § 87(2)(b) escaped the grasp of § 87(2)(b) went upstairs, obtained a significantly larger knife, ran outside, and chased § 87(2)(b) toward the intersection of Prospect Avenue and East 181st Street. At 7:42 p.m. on January 29, 2018, Police Officer Cummings and Police Officer Mahuad received a radio notification of an assault in progress in which an individual had a knife. They were the first officers to arrive at the incident location. Police Officer Cummings, who was driving toward § 87(2)(b) observed them running at Prospect Avenue and East 181st Street from a block away. Police Officer Cummings drove toward § 87(2)(b) and § 87(2)(b) Police Officer Cummings and Police Officer Mahuad exited their vehicle and repeatedly instructed § 87(2)(b) to drop the knife he was holding. After his initial instruction to § 87(2)(b) BWC footage captured Police Officer Cummings say, "Drop the fucking knife" (Board Review 02).

According to § 87(2)(b) § 87(2)(b) repeatedly asked to be shot or killed well before the officers arrived, stating, "Just kill me. Just kill me right now. Stab me. Shoot me. I just want to die. I want to die. I want to die," while he was fighting with § 87(2)(b) and § 87(2)(b)

According to Police Officer Cummings, he told § 87(2)(b) "Drop the fucking knife," because he was "scared for his life." He stated that he believed § 87(2)(b) intended to harm § 87(2)(b) He also stated that his own goal was to prevent anyone from getting hurt, and further, § 87(2)(b) did not comply with his initial instructions.

NYPD Patrol Guide Procedure 203-09 (Board Review 24) directs officers to be courteous and respectful. However, in Disciplinary Case #79627/04 (Board Review 08), the NYPD held that "when a police officer uses an otherwise impolite word during a stressful encounter where that officer is attempting to maintain control of the situation, the police officer's verbal slip does not rise to the level of actionable misconduct."

§ 87(2)(g)
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§ 87(2)(g)

Allegation B - Force: Police Officer Andrew Cummings fired his gun at § 87(2)(b)

Allegation C - Force: Police Officer Nicholas Mahuad fired his gun at § 87(2)(b)

The body-worn camera footage that the investigation did obtain depicted § 87(2)(b) walking in a circle around the officers' vehicle while holding what appeared to be a knife. He was instructed to drop the knife over twenty times and appeared to completely ignore the officers' instructions. § 87(2)(b) walked between two vehicles and toward the officers. He yelled "shoot me" at least eight times (Board Review 20). He moved to within six to ten feet of Police Officer Cummings, who repeatedly fired his gun. Police Officer Mahuad fired his gun as well. § 87(2)(b) appeared to be struck in the chest and fell to the ground.

Police Officer Cummings stated that his goal was the get § 87(2)(b) to drop the knife and to prevent anyone from being hurt. In attempt to achieve this goal, he repeatedly instructed § 87(2)(b) to drop the knife. Police Officer Cummings believed that when § 87(2)(b) began to walk toward him with the knife, he was trying to commit "suicide by cop" and was going to "make [Police Officer Cummings] use deadly force" by trying to kill him. Having observed § 87(2)(b) chase § 87(2)(b) he feared for both his own life and that of § 87(2)(b). He discharged his weapon because he believed that otherwise § 87(2)(b) would have killed him.

As stated above, § 87(2)(b) heard § 87(2)(b) asked to be killed shortly before he first attempted to stab § 87(2)(b).

According to Patrol Guide Procedure 221-01 (Board Review 12), officers are authorized to discharge a firearm to prevent or terminate the unlawful use of force that may cause death or serious physical injury.

According to New York Penal Law §35.30 (Board Review 13), a police officer may use deadly force when they reasonably believe that the use of deadly physical force is necessary to defend the police officer or another person from what the officer reasonably believes to be the use or imminent use of deadly force.

Patrol Guide Procedure 221-13 (Board Review 11) states that when an Emotionally Disturbed Person (EDP) takes actions that constitute an immediate threat of physical injury or death to themselves or others, deadly force will be used only as a last resort to protect the life of persons or officers present, and that a zone of safety should be maintained until a patrol supervisor arrives [emphasis in original text].

§ 87(2)(b) refused to drop the knife he was holding and walked toward the officers while yelling "shoot me" with said knife held in his hand. § 87(2)(g)

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) [Redacted] has been a party (Board Review 14).
- This is the tenth CCRB complaint to which § 87(2)(b) [Redacted] has been a party (Board Review 15).

- § 87(2)(b) [Redacted]
[Redacted]
[Redacted]
- [Redacted]
[Redacted]
[Redacted]
- [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
- [Redacted]
[Redacted]
- [Redacted]
[Redacted]
[Redacted]
[Redacted]

- § 87(2)(b) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- Police Officer Cummings has been a member-of-service for four years and has been a subject of two CCRB complaints and four allegations, none of which have been substantiated. § 87(2)(g) [REDACTED]
 - In Case #201800757, an allegation of physical force was closed as Complainant Uncooperative.
 - In Case #201805247, which remains open, allegations of threat of force, threat to damage/seize property, and search (of person) are pleaded against him.
- Police Officer Mahuad has been a member-of-service for three years and has been a subject of four CCRB complaints and fourteen allegations, six of which have been substantiated.
 - In Case #201708643, two allegations of threat of force, two allegations of discourtesy, an allegation of entry of premises, and an allegation of frisk were Substantiated against Police Officer Mahuad with the recommendation of formalized training. An allegation of question was Unsubstantiated and an allegation of entry, an allegation of physical force, and an allegation of threat of force were Exonerated. The recommended penalty for the substantiated allegations was 'Formalized Training.' Any subsequent NYPD dispositions and/or penalties are unknown to the investigation.
 - In Case #201708769, an allegation of threat of arrest and of abuse of authority – removal to hospital were closed as Complaint Withdrawn.
 - In Case #201800757, an allegation of physical force was closed as Complainant Uncooperative.
 - In Case #201805247, which is pending board review, a search (of person) allegation is pleaded against him. § 87(2)(g) [REDACTED]

- This case was not eligible for mediation.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- According to the New York City Comptroller's Office, as of January 22, 2019, no Notice of Claim has been filed in this case (Board Review 19).

Investigator:	Signature	Print Title & Name	Date
Squad Leader:	Signature	Print Title & Name	Date
Reviewer:	Signature	Print Title & Name	Date